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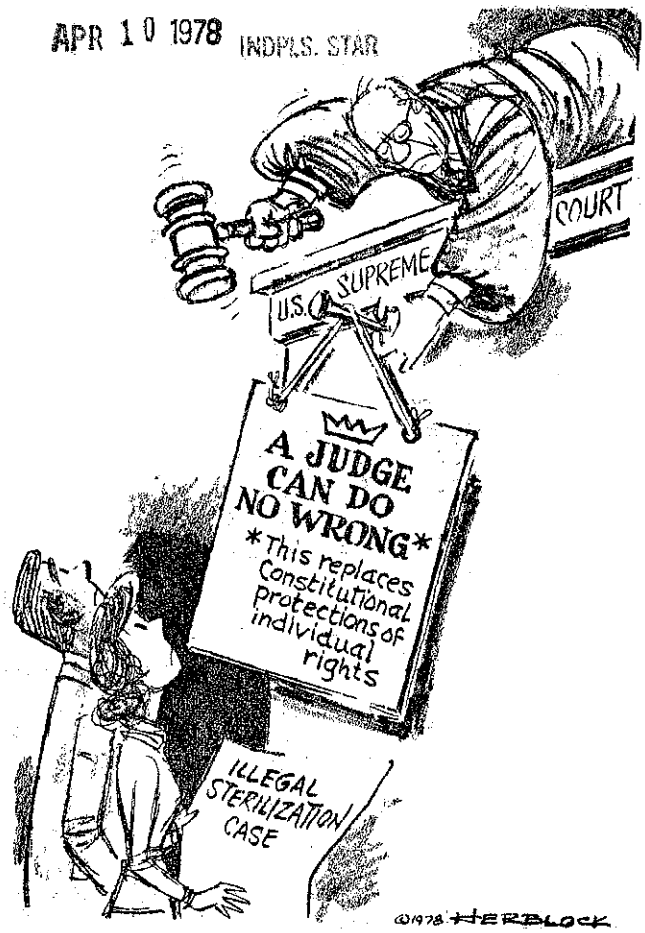

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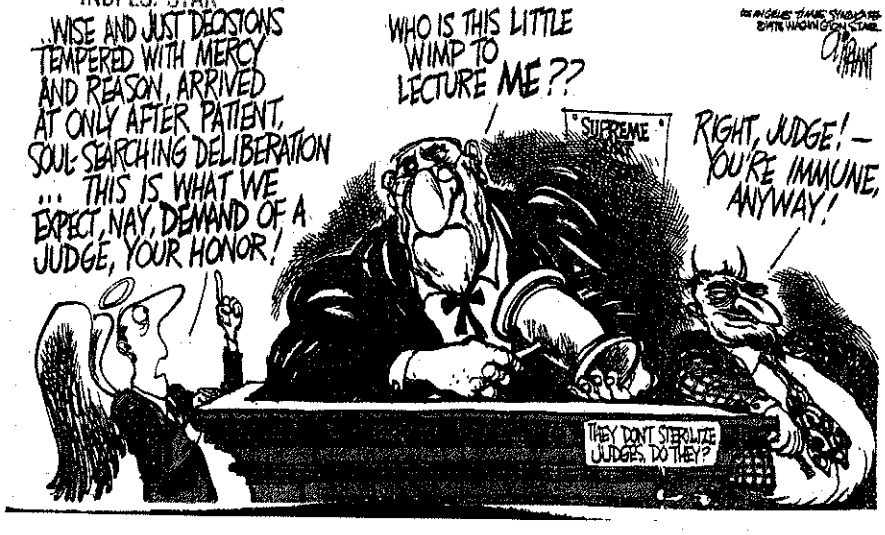

State Orders 2 Mental Patients To Be Sterilized

A 21-month moratorium on the involuntary sterilization of Indiana mental patients was ordered broken yesterday, while by conincidence the United States Supreme Court challenged the constitutionality of such laws.

The high court yesterday granted a hearing to a Nebraska woman whose sterilization had been ordered as a prerequisite to her release from a mental institution.

Meantime, Dr. William F. Sheeley, commissioner of the Indiana State Department of Mental Health, approved the sterilization of two women mental patients yesterday. Dr. Sheeley was acting under a 1927 state statute permitting such operations.

Indiana now is one of six states authorizing forced sterilization of mentally deficient women without a showing that their offspring would inherit the illness.

"It's a job I don't like," Dr. Sheeley said when questioned about his approval of the operations yesterday.

Statistics are incomplete on the number of persons made incapable parenthood by enforced operations in Indiana due to a discrepancy in methods of keeping records of these operations.

STATE MENTAL Health Department records show 706 men and 870 women were sterilized in Indiana between 1936 and 1962, but the number has tapered off in recent years.

An Indiana 1907 sterilization law, the first such in the nation, was declared unconstitutoinal by the Indiana Supreme Court in 1921 on the grounds that the patient was granted no hearing and no right to cross-examine doctors who considered the person unfit to have children.

A new state law in 1927 provided for sterilization of the feeble-minded, epileptic and hereditary insane "in the best interests of the patient and of society."

THE PROCEDURE for sterilizing a mental patient now starts with a recommendation from the hospital staff to the hospital superinendent. Voluminous written reports are made to justify the decision.

Parents or next of kin are invited to talk to hospital authorities about the case. If a patient has no relatives, a guardian is appointed to protect her interests.

The commissioner holds a hearing at the hospital with the patient present. If the commissioner approves sterilization, there is a delay of at least 32 days before the operation is performed.

Indiana had another vital role in the campaign for engenic sterilizations, apart from its early law. The relatively minor operation to sterilize men, vasectomy, was developed by Dr. Harry C. Sharpe at the Indiana State Reformatory in the 1890s.

A safe operation to sterilize women was developed in Europe about the same time and a surge of public opinion rose against allowing the congenital feeble-minded to reproduce.

The U.S. Supreme Court upheld the sterilization of a feeble-minded Virginia woman, daughter of feeble - minded parents who herself had a mentally defective child, in 1927.

"Three generations of imbeciles are enough," wrote Justice Oliver Wendell Holmes in that case.

EUGENICS PLAN IS VOTED IN SENATE

Feb 24, 1927

Permits Sterilization of Unfit Persons in Indiana Institutions.

The Senate yesterday passed, with little objection, the Holmes-Shake bill permitting eugenical sterilization of mentally unfit confined in state institutions by a vote of 35 ayes to 10 noes.

Senator C. Oliver Holmes of Gary, author of the bill, expected strenuous objection to the measure, but none was forthcoming when the bill was put on final passage.

Immediately after a brief explanation of the provisions of the measure by Senator Holmes, Senator Joseph M. Cravens, recalling an incident of 1925 when a similar bill was on its final passage, moved the previous question, but his motion was overruled.

The only objection came during the calling of the roll, when Senator Oliver R. Kline of Huntington explained his vote. Although he cast a favorable vote, he expressed a fear that the measure might establish a dangerous precedent. The bill now goes to the House, where it was indefinitely postponed in 1925.

Differing from the measure which failed to pass on the previous occasion, Senator Holmes explained that the provisions of the present bill provide adequate safeguards to prevent misuse of power or possibility of mistake.

IN INSTITUTIONS ONLY.

Where the bill of 1925 would have given a state eugenics officer considerable authority in the designation of any mentally unfit person in the state, whether in an institution or not, for sterilization "for the good of the public," the present bill permits only the sterilization of persons confined in institutions "so that they may retake their place in society and prove harmless members," Senator Holmes told the Senate.

Intricate machinery is specified by the bill before the sterilization operation may be performed. A petition from the superintendent of the institution to the governing board stating the fact and particulars of the case and the grounds for his recommendations is necessary.

The bill prescribes a hearing by the board of governors at which the inmate involved and legal guardian or parent must be present. The board may then cancel the petition of the superintendent, or if in its opinion the inmate is found to be the potential parent of socially inadequate offspring, may order the sterilization.

An intervening period of thirty days is required before the operation is performed to give ample time for appeal from the decision of the board of governors to the Circuit court of the county in which the institution is situated.

INDIANA

Monday, February 26, 1996

Old law called for sterilization of 'feebleminded' residents

Eugenics ideas lead to legislation to end procreation of undesirables

INDIANAPOLIS (AP) — The photos and documents at the Indiana State Archives tell how the state decided long ago to save money by sterilizing people deemed undesirable.

Indiana was one of many states to enact laws that sought to stop the insane and feebleminded from having children. The law stayed on Indiana's books for 47 years.

State archivist Bob Horton discovered the five musty boxes four years ago.

"Indiana in the late 1800s and early 1900s was in a way leading the world in its philanthropical ideas," Horton said.

Those ideas were based on eugenics, or breeding to improve the human race. Legislators translated those ideas into laws that targeted at least 56,000 of the state's residents for involuntary sterilization.

A lack of funds prevented Indiana from carrying out the policy in full, though at least 2,000 were sterilized in state institutions.

The Committee on Mental Defectives — eight lawmakers and doctors appointed by Gov. Samuel Ralston — in 1915 began classifying Indiana's residents to show that epileptics, the feebleminded and the insane were the root cause of poverty, degeneracy and crime.

A half dozen employees of the Eugenics Record Office in Cold Spring Harbor, N.Y., fanned out to 31 counties. They looked for "undesirable" families that continued to expand and cost the state money. They found them by asking doctors, judges and teachers for names of people who received public aide. They also talked to patients in state homes and asylums and tracked down their families.

Dr. Hugh Hendrie, chairman of the psychiatry department at Indiana University School of Medicine, notes the survey concentrated only on families who were poor or had a history of mental deficiency.

One way the committee measured feeblemindedness was by administering a version of the Stanford-Binet IQ test.

The first three parts tested verbal, logical and mathematical skills. But Hendrie said those tests measure not intelligence but how much people learn in school.

The fourth part of the test attempted to measure moral judgment.

"You have to be a sophisticated person to be able to make those judgments," Hendrie said.

Armed with data from the county surveys, the committee estimated that Indiana had 56,000 mental defectives.

They reasoned that 20 percent were epileptic or insane. The other 44,800 they considered feebleminded, a classification that ranged from mildly retarded to socially deviant because of alcohol abuse or sexual immorality.

"Many of these shiftless, feebleminded folks can barely eke ou an existence for themselves, bu that does not deter them fror marrying and propagating thei kind, thus adding to the burden c the state," the committee wrote i its 1918 report.

They suggested a cost-effectiv solution: A farm colony where suc people could be put to work. With $300,000 grant from the Genera Assembly, the Indiana Farn Colony for the Feebleminde opened in Butlerville in 1919. Me farmed and worked in a stone quar ry. Women sewed and did laundry.

In 1927, the General Assembl went further. It passed Senate Bil 188 "to prevent the procreation o mental defectives, idiots, imbe ciles, morons, epileptics and the incurably insane."

The law compelled institutions to sterilize inmates for whom pro creation was deemed inadvisable.

According to Dr. Eugene Roach an Anderson physician who lob bied for the law's 1974 repeal while the law was in place many parents of mentally retarded chil dren had their children sterilized.

Kindly Doctor Is Frustrated

INDEPS. NEWS SEP 26 1979

By DAVID MANNWEILER

He is an Indianapolis physician, an obstetrician-gynecologist, wrestling with an encounter in his office that left him helpless and frustrated.

"This mother came in and brought her poor child to me," the doctor said. "The girl is coming into puberty but she doesn't understand what is happening to her body. She is markedly microcephalic (has an unusually small head), blind and severely retarded. The mother wanted to have her sterilized."

The doctor understood the mother's motivations but he knew there was little he could do for her. He checked with the hospital where he is a staff member, asking if an exception could be made, but he was turned down.

It was the answer he had expected.

"The sad truth is, no retarded person in this city can be sterilized any longer," the doctor said. "The doors are closed because of Federal and legal action. It's not that the doctors won't perform the sterilizations — I've done them for free — but the hospitals will not allow you to do them anymore."

He said there is not a single hospital in Indianapolis that will allow mentally retarded people to be sterilized. As far as he knows, he added, that's the case all across the country.

The hospitals have altered their attitude because of a couple of instances where borderline retarded people have been sterilized but "ambulance-hot lawyers," as the doctor called them, convinced the patient to sue the parents and the hospitals. They have won millions of dollars in settlements.

He knows of no such cases in Indiana, he added.

"I have no doubt in my own mind that in some cases the operation was misused by some members of the medical community," the doctor said. "It started with some white doctor in the Carolinas who was sterilizing all the black patients he could get his hands on. He told them they wouldn't get their welfare checks if they had any more babies. But because of one person in one state, everyone has lost.

"I have seen people with Down's syndrome (mongolism) who should never have children. But there are a bunch of do-gooders who say they have the 'right to reproduce.' The hospitals now say this is not a doctor's decision, it is a hospital's decision.

"If a person with an IQ of 60 marries someone with an IQ of 58 and they have a child, I know what kind of home life that child will have. I think about a child with a 115 IQ living with parents with IQs of 60 and 58. I think it would be a fate worse than death."

He said unfortunately "people way down the list, with IQs in the 40 to 50 range, cannot hardly be rehabilitated but they are sexually active. They can reproduce like mad. Their child immediately becomes a ward of the court and goes to a foster home, at taxpayers' expense."

Before the hospitals changed their rules, doctors often performed simple hysterectomies for mentally retarded patients who could not take care of themselves hygenically during menstrual periods, he said. The hysterectomy allowed them to be sexually active without having children.

A spinoff problem is government intervention in the Medicaid program which "makes it so hard for women to get sterilized.

"Medicaid now has a woman wait at least three days to get her tubes tied. It's a fairly new restriction. I've had women who have said, 'I've got four children, no husband and I don't want more children.' They ask me to tie their tubes and I say 'Okay, you got it,' but I don't bill Medicaid for the operation. So now I'm paying all the taxes and giving the government free service, too," the doctor said.

He said there used to be doctor-patient relationships "but now there is a hospital-patient relationship and a government-patient relationship. As long as that's the case, medicine is going to suffer and patients are going to suffer."

Tribe Of Ishmael Shows 'Classic' Degeneration

An interbreeding gypsy-type "family" that lived in Indianapolis for many years has been described as a "classic" case of social degeneration.

The "Tribe of Ishmael" was active here from 1832 until the 1920s, but its curious history has been limited to studies by public health experts and sociologists.

Numbering hundreds of families at one time, most of whom preferred living near White River, the Ishamelites were involved in prostitution, murder, welfare and destitution.

THE INTERBREEDING has been described as almost "beyond belief," although its extent is indicated in this part of an 1890 study of the tribe:

"Robert R—— Jr. enjoyed several relations not generally alloted to mankind, for his mother was the daughter of his father. This came near letting him out without a grandmother, but he doubled up in another direction, inasmuch as his brothers and sisters became his uncles and aunts. He had a record of one term in prison. He first married Christina E——, a well-known prostitute, but they soon separated and next married Lydia Anne U—— and here he secured some odd relationships. For he became stepfather and father-in-law to his brother's uncle Alex. His daughter-in-law was his stepdaughter, his aunt and his sister-in-law. His wife became the niece of her son-in-law."

The "tribe" constituted the largest study in social degeneration ever reported, Dr. Thurman B. Rice of the Indiana State Board of Health said in a 1952 medical history that recounted the background of the Ishmaelites.

THESE PEOPLE were the subject of extensive studies, one by the Rev. Oscar C. McCulloch in 1888; one by J. Frank Wright in 1890, and one by Arthur H. Estabrook in 1916.

When the Rev. Mr. McCulloch made his report, he said that the complete records up to then filled 7,000 closely written pages.

The "tribe" first appeared in Indianapolis about 1832, when it included some 30 families with the central family, that of Ben Ishmael. This was theman's legal name, although doubtlessly not his original family name.

OVER THE years, welfare, charity, health and sociology investigators gathered data on some 250 families in the tribe, although the number of families was much larger as the members spread through several Mid-West states.

The Rev. Mr. McCulloch's extensive study found that intermarriage in the tribe had provided a history of pauperism, harlotry, illegitemacy, disease, violence and early death.

"They live by petty stealing, begging, ash-gathering," he reported to the Conference of Charities. "In summer they 'gypsy' or travel in wagons east or west. We hear of them in Illinois about Decatur, and in Ohio about Columbus. In the fall they return. They have been known to live in hollow trees on the river-bottoms or in empty houses."

THEY ALSO lived in shacks or shanties by the river, with the buildings placed on skids so they could be pulled or floated in case of floods.

The Rev. Mr. McCulloch said the "tribe's" bloodline was one of licentiousness, diseased and physically weakened condition, mental weakness, general incapacity and "unfitness for hard work."

Expert at obtaining welfare assistance, the families also stole and lived on money from prostitution and begging by their children. One case was mentioned where the children's eyes were made sore with vitriol so passers-by would be more sympathetic when the children begged.

THE ORIGINAL 30 families evidently came from Kentucky, Tennessee and North Carolina, the Rev. Mr. McCulloch reported.

THE ISHMAELITES began breaking up in the early 1920s as James Whitcomb Riley Hospital for Children was under construction and the neighborhood along the river began to change.

Fremont Power

Two Views Heard On Sterilization

INDEP. NEWS
JAN 26 1968

A GENERAL SURGEON here, Dr. Herschel C. Moss, has been whacking the drums for eight years or so over what he considers General Hospital's "arbitrary and discriminatory rules that literally force the lower income groups to have more children."

His general concern is the number of children born into this world unwanted and destined for a marginal kind of life on welfare rolls, a burden on the taxpaying public. His particular complaint is that welfare mothers who might elect to undergo a surgical sterilization have a great many obstacles thrown in their way, with the result that most of them are unlikely to achieve this safeguard against further unwanted pregnancies.

There is no intent here to play God and force this procedure on those unwilling to have it. But Dr. Moss' contention is that a woman should be free to have this procedure, on her own volition if she is unmarried or with agreement of her husband if she has one.

Others Take Different Position

A great many other doctors, particularly in obstetrics and gynecology, are not so sure. They take the position, in effect, that the patient may not know what's best for herself.

Dr. Charles F. Gillespie, chief of the obstetrics-gynecology (OB-GYN) services at General, has long been familiar with Dr. Moss' stance—"he's a crusader," Dr. Gillespie said—and the OB-GYN chief doesn't flinch at a confrontation over the matter.

He said General's policy coincides with that of the American College of Obstetrics and Gynecology. This policy justifies sterilization for certain medical reasons —heart disease, tuberculosis, etc.—and for socio-economic reasons within certain limits related to the age of the woman and the number of living children she has. A mother at 25 must have five children to qualify, at 30 four children and at 35 three children.

Gillespie Suggests The 'Pill'

"We don't usually do this except after a baby is delivered," Dr. Gillespie explained.

This makes Dr. Moss, a member of General's surgical staff, fume.

"Most of them do not want to get pregnant again in order to deliver a baby to comply with that rule," he said.

Dr. Gillespie points out that there are other ways—"the pill," for one—to avoid pregnancy. Dr. Moss complains that General doesn't stock "the pill" for birth control purposes.

He also attacked a policy at General denying sterilization to women on the welfare aid to dependent children program since the assumption is that they have no husband in the household.

Dr. Gillespie said that this has been changed, that "we don't look at this closely anymore." Dr. Moss is able to cite cases in which General's personnel didn't seem to know about the change.

People Needed To 'Learn On'

Dr. Gillespie argues that if sterilization were thrown open to all, "they will be lined up for it."

Dr. Moss implies—and Dr. Gillespie doesn't flatly deny—that another consideration may be involved here: Teaching material.

Dr. Gillespie said "it's not exactly that," but he poses the question: "Who are you going to learn on?"

That is, if the welfare poor don't continue reproducing in adequate numbers, how are interns and residents going to learn their trade?

"Would you want a man just out of school doing a major operation on you?" Dr. Gillespie asked.

Linda and Leo Sparkman are an unlikely test case for courts

The Herald-Telephone

state

Monday
November 21, 1977
Page 10

By DAVE KURTZ
United Press International

KENDALLVILLE (UPI) — Linda Kay Sparkman just doesn't seem the type to cause national headlines.

The 21-year-old woman lives in a plain-looking mobile home on the south side of Kendallville in northern Indiana. She stays at home with her poodle and likes to keep house.

HER HUSBAND, LEO, is a laborer at an Albion factory.

There is one thing unusual about the Sparksmans, however. They can't have children, even though they want them.

Six years ago, Linda was sterilized. Her mother requested the operation, and DeKalb Circuit Judge Harold Stump signed his official approval.

Linda did not find out about the sterilization until four years later. When she did, she and Leo sued the judge, her mother, and the doctors, lawyer and hospital involved for $3.25 million.

Last month, her case reached the U.S. Supreme Court. Because it involves sex and sterilization, it made headlines in newspapers across the country. Because it involves suing a judge, many Supreme Court observers consider "Sparkman vs. Stump" one of the year's most important cases.

For more than 100 years, American law has held that a judge can be sued only for the most extreme abuses. Linda's lawyer must convince the court this is one of those cases — or if it isn't, the justices should make new, more stringent rules for judicial conduct.

THE ROAD TO THE Supreme Court started six years ago when Linda (her name was Spitler then) was 15 years old and living in Auburn.

According to her mother's affidavit, Linda had been "leaving the home on several occasions to associate with older youth or young men and as a matter of fact having stayed overnight with said youth or men."

Her mother, Ora McFarlin, put those words in a petition drawn by her attorney, Warren Sunday of Auburn. It asked that the sterilization of Linda be permitted "to prevent unfortunate circumstances to occur."

The affidavit claimed Linda was "considered to be somewhat retarded" although she attended public schools and had been advanced along with others her age.

MRS. MCFARLIN SIGNED the affidavit on July 9, 1971. That same day, it was taken to Judge Stamp for official approval. He also signed it that very day — July 9.

Six days later, on July 15, Linda was taken to DeKalb Memorial Hospital. This time, she claims, she was told her appendix would be removed. Instead, her fallopian tubes were cut and tied, apparently sterilizing her forever.

In her lawsuit, Linda claims she did not know about the sterilization on Aug. 18, 1973, when she married Leo Sparkman. She says she suspected nothing until a few months later when she asked her mother why she had not yet become pregnant.

Then, the suit claims, her mother told her her "tubes had been tied, but that they would come untied on their own accord." Linda was reportedly warned not to tell Leo, for fear he would divorce her.

A few months later, the suit says, she told Leo anyway and the couple had marital problems caused by the inability to have children.

THEY WENT TO ATTORNEY Richard Finley of Kendallville to talk about divorce. He wrote Dr. John Hines of Auburn, who allegedly performed the operation, and asked about it. Hines replied that he had performed a tubal ligation.

On Nov. 26, 1975, Finley filed suit for the Sparkmans against everyone involved, asking $2.75 million in damages for Linda and $500,000 for Leo's loss of potential fatherhood.

Judge Stump, the suit claims, "did not provide procedural safeguards" for Linda, including some required by the state law on sterilizations at the time. Under Indiana law in 1971, sterilization was still permitted but only on patients in a mental institution.

The suit charges Stump approved the operation "apparently without a hearing, without plaintiff, Linda Kay Sparkman, present, and without representation on her behalf."

However, even if the sterilization were clearly illegal, as the lawsuit claimed, Linda's case faced a major roadblock. For the same laws that guard her rights also guard the rights of judges. They say a judge cannot be sued merely on the grounds he made a mistake.

THAT RULE DATES BACK to an 1871 U.S. Supreme Court decision which said judges are protected by "judicial immunity" against lawsuits, even when their acts are "in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."

In Fort Wayne federal court, Judge Jesse Eschbach decided the rule protected Stump. He said Stump was "clothed with absolute judicial immunity," and dismissed the suit.

The next higher court, however, did not agree. At the Seventh Circuit Court in Chicago, three judges ruled Stump "acted extrajudicially and the doctrine of judicial immunity is inapplicable in this case."

In a strongly worded opinion, Justice Luther Swygert said "the purported judicial action of defendant Stump had no support in statute or previous common law," and that Linda was sterilized "without the slightest steps to insure that her rights were protected."

TO GIVE JUDGES immunity in such cases, he said, "would be sanctioning tyranny from the bench."

If that had been the end of the story, the case would have gone to trial. Linda's lawyer would still have had to convince a judge or jury she is entitled to damages.

Instead, the Supreme Court agreed to review the Chicago court's ruling.

The high court's action was encouraging to the judge's side, since it makes a change in his favor possible, including possible removal of Stump as a target for the lawsuit while leaving others open to damages.

Many outsiders agree the case is important.

Judges' organizations are reportedly lining up on Stump's side, while civil rights groups are joining forces with the Sparkmans. Both sides may send the justices "friend of the court" briefs to present their views on the case.

THE COURT WILL ALSO hear from the lawyers. Finley and George Fruechtenicht of Fort Wayne, representing Stump, will argue before the nine justices sometime early next year.

A few weeks or months later, the Supreme Court will announce its decision. It may set down an important new rule on the limits of immunity for judges. Or it may say the old rule remains, and make it more clear.

Either way, the court will decide without ever hearing or seeing Linda Sparkman herself. The case that began when Linda and Leo were seeking a divorce in 1975 has become a much bigger question than the size of the Sparkman family.

Secret Court Order

INDPLS. NEWS JAN 18 1978

By JOHN RUTHERFORD

Can a judge issue secret orders to have the arm of a young girl cut off by a doctor if her mother considers her a compulsive shoplifter?

This was the essence of a question propounded by Justice Potter Stewart in an Indiana case that was argued before the U.S. Supreme Court last week.

The answer he got: Yes, under a state law giving circuit judges "original and exclusive jurisdiction in all cases at law and in equity whatsoever."

George E. Fruechtenicht, attorney for Dekalb County Circuit Judge Harold D. Stump, hastened to add, however, that he didn't think his client would think such a remedy appropriate.

The case is before the high court because Mrs. Leo Sparkman found out years later that her mother had had her sterilized at age 15 without her knowledge under an order from Judge Stump. She sued the judge. The specific question before the court is, can the judge be sued? The case, however, also raises the spector of judicial tyranny. Just how far can a judge go in decreeing what he wills without telling anyone?

Judge Stump acted on a sworn paper presented to him by a lawyer at the request of the mother of the woman who was then a child, but, according to Morton Mintz of the Washington Post in a report on the Supreme Court proceedings:

"The paper never was filed in court. Judge Stump approved the sterilization without disclosing his action to anyone. Thus Linda (now Mrs. Sparkman) had no opportunity to seek legal counsel, challenge her mother's allegations in a hearing or have an appeals court decide whether the allegations, even if true, justified rendering her permanently sterile."

The sworn statement asserted that she was staying overnight with youths and men, was beyond reliable parental control, and should undergo a tubal ligation to "prevent unfortunate circumstances."

Her mother told her she was going to have her appendix removed, but only years later did she learn from the doctor that she was sterilized. Federal Judge James E. Eschback dismissed the suit she and her husband filed on grounds that Judge Stump was "clothed with absolute judicial immunity" under a doctrine laid down by the U.S. Supreme Court in 1817.

Last March, the 7th U.S. Circuit Court of Appeals reversed Eschbach, saying that to validate Judge Stump's action would be to sanction "tyranny from the bench," thus paving the way for Judge Stump to appeal to the Supreme Court.

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Supreme Court Hears Sterilization Suit Against Mother And Judge

Washington (UPI) — The Supreme Court was told Tuesday that an Indiana judge who agreed to let a young woman be sterilized without her consent cannot be sued for his action because of the century-old concept of judicial immunity.

The case before the court was started by Linda Kay Sparkman of Kendallville, Ind., who discovered after her marriage that she had been sterilized in 1971 at the request of her mother, Ora McFarlin.

Linda was 15 when the tubal ligation was performed, and was told she was having her appendix removed.

In 1971, Mrs. McFarlin filed a petition with DeKalb County Judge Harold Stump alleging her daughter was somewhat retarded. She said the daughter had left home "on several occasions" with youths or young men and stayed overnight with them, and expressed concern that Linda would become pregnant.

STUMP GAVE OFFICIAL approval to the affadavit requesting sterilization the same day it was filed. He heard no testimony, did not appoint a lawyer to represent Linda's interest and did not secure her informed consent.

Four years later, after her marriage to Leo Sparkman and unsuccessful attempts to become pregnant, Linda was informed of the sterilization by the doctor who performed it. The Sparkmans filed a suit asking more than $3 million in damages from everyone involved, including Linda's mother and the judge.

U.S. District Judge Jesse Eschbach of Fort Wayne threw out the case, claiming Stump was judicially immune from liability under federal civil rights laws and neither the judge nor the others could be sued. But the 7th U.S. Circuit Court of Appeals disagreed, and the right to sue now will be determined by the Supreme Court.

GEORGE FRUECHTENICHT, a Fort Wayne lawyer representing Stump, said the sole issue before the court is whether Stump had jurisdictional power to approve the sterilization, not the wisdom of his action. He said Indiana law gives a state judge jurisdiction in all matters of law, including a mother's right to request medical treatment for a minor child.

Several justices questioned Fruechtenicht in detail on this contention. Potter Stewart asked whether the situation would be the same for a mother who claimed her daughter was a kleptomaniac and "should have her right hand chopped off."

Fruechtenicht said that would be "an inappropriate action by the judge," but judicial immunity still would apply to that judge, whether or not he acted for the right reason, because he had the juridiction to make such a decision.

Judicial Immunity Argued

WASHINGTON (UPI) — The lawyer for an Indiana judge who allowed a young woman to be sterilized without her knowledge asserts that the judge cannot be sued even if his action was wrong.

The woman's lawyer argues, however, that DeKalb County Judge Harold Stump lacked authority to make such a decision and cannot avoid a hefty damage suit by claiming protection under a claim of judicial immunity.

The controversial sterilization case involves Linda Kay Sparkman, 21, of Kendallville, Ind., who discovered after her marriage she had been sterilized at age 15 at the request of her mother.

The U.S. Supreme Court heard arguments on the case yesterday and will decide it later.

Mrs. Sparkman and her husband, Leo, have filed a suit asking for more than $3 million in damages from all individuals involved in the sterilization, including Mrs. Sparkman's mother Ora McFarlin, the judge and the doctors who performed the tubal ligation.

Mrs. Sparkman was sterilized in 1971 at the request of her mother who said she was "somewhat retarded" and had been staying overnight with youths and older men. The mother expressed concern that her teen-aged daughter would become pregnant and submitted to Stump a petition requesting sterilization.

The judge signed the petition the same day. Stump heard no testimony as to the validity of Mrs. McFarlin's allegations, did not appoint a lawyer to represent Linda's interests and did not secure Linda's informed consent, according to her lawyers.

Linda entered the hospital a few days later and was sterilized. She was told she was having her appendix removed.

The first Federal judge to hear the case threw it out, claiming Stump was judicially immune under Federal civil rights laws. But the 7th U.S. Circuit Court of Appeals disagreed, so the Supreme Court now will determine if Mrs. Sparkman has a right to sue the doctor and others involved.

George Fruechtenicht, the lawyer representing Stump, told the court Stump had the jurisdictional power to approve the sterilization and that the wisdom of his action is not involved.

He said Indiana law gives a state judge jurisdiction in all matters of law, including a mother's right to request medical treatment for a minor child.

Mrs. Sparkman's lawyer, Richard Finley of Kendallville, disagreed. He contended that the Indiana statutes allowing parents to consent to surgery for minor children applies only to necessary surgery.

Center Seeking To Aid Hoosier's Sterilization Suit

STAR STATE REPORT

South Bend, Ind. — The National Center for Law and the Handicapped Inc. has asked the U.S. Supreme Court to let it intervene on behalf of a Kendallville woman suing a judge who ordered her sterilized without her knowledge at the age of 15.

The center filed a friend of the court brief with the nation's highest court in Linda Sparkman's $2.75 million damage suit against DeKalb Circuit Court Judge Harold D. Stump and hospital and medical personnel involved in the 1971 sterilization.

The brief attacked the concepts that sterilization can prevent mental retardation and that a judge's actions should be protected when procedural safeguards have been denied and a fundamental right abridged.

A federal judge at Fort Wayne dropped Stump as a defendant on grounds of judicial immunity. But the Seventh Circuit Court of Appeals in Chicago reinstated him on grounds his "purported judicial action . . . had no support in statute or previous common law." The U.S. Supreme Court will take up that question in arguments next Tuesday.

Mrs. Sparkman, 21, filed the suit after she and her husband Leo learned of the sterilization operation in 1975 after encountering difficulties in their attempts to conceive a child.

The judge ordered the operation after the girl's mother, Ora McFarlin, presented him an affidavit contending her daughter was "somewhat retarded" and that she wanted to "prevent unfortunate circumstances."

Judge Stump 'Relieved' By Decisior

INDPLS. NEWS

Special to The News

KENDALLVILLE, Ind. — DeKalb Circuit Judge Harold Stump said he "certainly" is relieved at a Supreme Court decision yesterday which ruled he could not be sued for damages for his approval of a mother's request that her daughter be sterilized.

The decision yesterday reversed a Federal appeals court ruling. Linda Kay Sparkman, 22, had sought to sue Stump for damages because he approved her mother's request to have her sterilized without her knowledge.

"I feel personally relieved and professionally reinforced that the Supreme Court has chosen not to deviate from the pattern of judicial immunity which has been in effect since 1872," Stump said.

The Supreme Court ruled that judges cannot be sued for erroneous, "even malicious" decisions unless there was "a clear absence of all jurisdiction."

Even the "tragic consequences" of Stump's actions are not enough to deprive him of judicial immunity, the court said in an opinion by Justice Byron White.

Stump said he based the approval on state statutes which allow a parent or natural guardian to provide medical attention, including surgery, when considered necessary.

Three Supreme Court justices dissented from the majority opinion.

"I think what Judge Stump did was beyond the pale of anything that could sensibly be called a judicial act," said Justice Potter Stewart.

"A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity," he said.

Mrs. Sparkman, then Linda Spitler of Auburn, sued in 1975 seeking damages for the tubal ligation performed four years previously. Mrs. Sparkman did not know she had been sterilized until she asked her mother, Ora McFarlin, why she could not have children after her marriage to Leo Sparkman.

Mrs. McFarlin had requested the operation because she contended her daughter, then only 15, was "a little retarded" and that she had spent an unsupervised night with older men and boys.

Mrs. McFarlin told her daughter the operation was an appendectomy. Instead her fallopian tubes were cut and tied, an irreversible form of sterilization.

Mrs. McFarlin presented to Stump a legal document in which she agreed to waive any future liability claim against attending physicians and the DeKalb Memorial Hospital.

The document was not filed in court, and Mrs. Sparkman was not allowed an opportunity to challenge her mother's allegation that the operation was justified.